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No. _____

August 7, 2009

NOTICE OF EMERGENCY CONTROLLED SUBSTANCE SCHEDULING ACTION

In accordance with Chapter 329-11(e) the Administrator of the Department of Public Safety's Narcotics Enforcement Division may make an emergency scheduling by placing a substance into schedules I, II, III, IV or V on a temporary basis, if the administrator determines that such action is necessary to avoid an imminent hazard or the possibility of an imminent hazard to the health and safety of the public. If a substance is added or rescheduled under this subsection, the control shall be temporary and, if the next regular session of the state legislature has not enacted the corresponding changes in this chapter, the temporary designation of the added or rescheduled substance shall be nullified.

In accordance with provisions set forth in Chapter 329-11(e) of the Hawaii Revised Statutes, Emergency Scheduling Authority, the Administrator of the Narcotics Enforcement Division is emergency scheduling the substance Salvia Divinorum and/or Salvinorin A. This emergency scheduling action shall take effect on **August 15, 2009 (12:01 AM.)** to avoid an imminent hazard or the possibility of an imminent hazard to the citizens of Hawaii from this dangerous hallucinogenic substance.

The Drug Enforcement Administration even though it has not made "Salvia divinorum or its constituent Salvinorin A" as a controlled substance it has determined that this drug does not have an approved medical use in the United States and is presently listed as a "drug of concern" by the Federal Drug Enforcement Administration due its ability to evoke hallucinogenic effects, which in general, are similar to those of other scheduled hallucinogenic controlled substances.

Presently Hawaii does not have a controlled substance analogue law like that of the Federal Government to deal with individuals abusing this drug. Under Federal law in 21 USC Sec. 802 the term "Controlled Substance Analogue is defined in 21 USC Sec. 802 (32) to mean:

(32) (A) Except as provided in subparagraph (C), the term "controlled substance analogue" means a substance -

(i) The chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) **With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.**

This definition allows the Federal government to only treat Salvia Divinorum and/or Salvinorin A as a controlled substance analogue if it is used for human consumption as a psychoactive drug. This leaves a loophole in the law for individuals selling this drug labeled as not for human consumption.

As of August 2009, twelve states have enacted legislation placing regulatory controls on Salvia Divinorum and/or Salvinorin A due to its hallucinogenic properties. Delaware, Florida, Illinois, Kansas, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota and Virginia have placed Salvia Divinorum and/or Salvinorin A into schedule I. Louisiana, and Tennessee enacted other forms of legislation restricting the distribution of the plant and making human consumption of Salvia illegal. California and Maine passed legislation making it illegal to sell Salvia to minors.

During last legislative session Oregon, Alaska, New Jersey, Pennsylvania, Iowa, Georgia, Texas, Massachusetts, Wisconsin, Alabama, Indiana, Maryland, Michigan, Hawaii, Kentucky, North Carolina proposed legislative bills to place regulatory controls on Salvia Divinorum and/or Salvinorin A. During the last legislative session there were two bills that contained language to place Salvia Divinorum and/or Salvinorin A as a Schedule I controlled substance, however HB 2179 was not scheduled for hearing and SB1487 was amended deleting this drug due to a posting requirement mandated by Chapter 329-11(a) Hawaii Revised Statutes.

Salvia Divinorum and/or Salvinorin A have also been placed under regulatory controls in Australia, Belgium, Denmark, Estonia, Finland, Italy, Japan, Spain, and Sweden due to its potential for abuse.

The Department is therefore requesting that the substance Salvia divinorum and its derivatives be added as a Schedule I controlled substance by amending section 329-14(d) Hawaii Revised Statutes to read as follows:

"(d) Any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts

of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alpha-ethyltryptamine (AET);
(2) 2,5-dimethoxy-4-ethylamphetamine (DOET);
(3) 2,5-dimethoxyamphetamine (2,5-DMA);
(4) 3,4-methylenedioxy amphetamine;
(5) 3,4-methylenedioxymethamphetamine (MDMA);
(6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-MDA);
(7) 3,4-methylenedioxy-N-ethylamphetamine (MDE);
(8) 5-methoxy-3,4-methylenedioxy-amphetamine;
(9) 4-bromo-2,5-dimethoxy-amphetamine(4-bromo-2,5-DMA);
(10) 4-Bromo-2,5-dimethoxyphenethylamine (Nexus);
(11) 3,4,5-trimethoxy amphetamine;
(12) Bufotenine;
(13) 4-methoxyamphetamine (PMA);
(14) Diethyltryptamine;
(15) Dimethyltryptamine;
(16) 4-methyl-2,5-dimethoxy-amphetamine;
(17) Gamma hydroxybutyrate (GHB) (some other names include gamma hydroxybutyric acid; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
(18) Ibogaine;
(19) Lysergic acid diethylamide;
(20) Marijuana;
(21) Parahexyl;
(22) Mescaline;
(23) Peyote;
(24) N-ethyl-3-piperidyl benzilate;
(25) N-methyl-3-piperidyl benzilate;
(26) Psilocybin;
(27) Psilocyn;
(28) 1-[1-(2-Thienyl) cyclohexyl] Pyrrolidine (TCPy);
(29) Tetrahydrocannabinols;
(30) Ethylamine analog of phencyclidine (PCE);
(31) Pyrrolidine analog of phencyclidine (PCPy, PHP);
(32) Thiophene analog of phencyclidine (TPCP; TCP);
(33) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number 96-48-0 when any such substance is intended for human ingestion;
(34) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4- butylenes glycol; butylene glycol; 1,4-dihydroxybutane; 1,4- tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4- diol with Chemical Abstract

Service number 110-63-4 when any such substance is intended for human ingestion;

(35) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts, and salts of isomers;

(36) N-benzylpiperazine (BZP; 1-benzylpiperazine) its optical isomers, salts, and salts of isomers;

(37) 1-(3-trifluoromethylphenyl)piperazine (TFMPP), its optical isomers, salts, and salts of isomers;

(38) Alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers; [~~and~~]

(39) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;

(40) Salvia divinorum:

(41) Salvinorin A; and

(42) Divinorin A